

POSTPONED TO ME
JAN 26 1925

20

FILED
JAN 14 1925
WM. B. STANSE
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1924.

No. 622.

VINCENT L. KNEWELL, AS SHERIFF OF MINNEHABA
COUNTY, SOUTH DAKOTA, APPELLANT,

vs.

GEORGE W. EGAN.

MOTION TO SUBSTITUTE.

Come now the attorneys for the Appellant in the above case, and suggest to the Court the expiration of the term of Vincent L. Knewell as Sheriff of Minnehaha County, South Dakota, on January 6, 1925, also that George Boardman is now the duly elected, qualified and acting Sheriff of said county. They therefore pray that the said George Board-

man be substituted as the Appellant in place of the said Vincent L. Knewell. And petitioners will ever pray, etc.

Respectfully submitted,

BYRON S. PAYNE,

SAMUEL HERRICK,

Attorneys of Record for Appellant.

BUELL F. JONES,

Attorney-General of South Dakota.

MEM.—Section 2317 of the Revised Statutes of South Dakota provides as follows:

“No action shall abate by the death, marriage, or other disability of a party, or by the transfer of any interest therein, if the cause of action survive or continue. In case of death, or other disability of a party, the court, on motion, at any time within one year thereafter, or afterwards on a supplemental complaint, may allow the action to be continued by or against his representatives or successor in interest. In case of any other transfer of interest, the action shall be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted in the action. If a verdict shall be rendered in any action for a wrong, such action shall not abate by the death of any party, but the case shall proceed thereafter in the same manner as in cases where the cause of action now survives by law. At any time after the death or other disability of the party plaintiff, the court in which an action is pending, upon notice to such person as it may direct, and upon application of any person aggrieved may, in its discretion, order that the action be abated, unless the same be continued by the

proper parties, within a time to be fixed by the court, not less than six months nor exceeding one year from the granting of the order."

Reference is also had to *Thompson v. U. S.* (103 U. S., 480, 484), also to one *Corpus Juris*, 146, Section 230, and to the affidavit of Byron S. Payne, Esq., filed this day in support of motion by the State of South Dakota to intervene in this case as a party appellant.

(5278)